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17 UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 (San Jose Division)

20 ELGRIE HURD III,

21 Plaintiff,

22 v.

Case Number:

Hon.

23 TOM COUNCIL,

24 Defendant.

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

25
26 NOW COMES Plaintiff, ELGRIE HURD III, through his attorneys, and
27 complains against Defendant, TOM COUNCIL, as follows:
28

COMMON ALLEGATIONS

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3
4 1. On November 11, 2005, at or near DeAnza College, located at 21250
5 Stevens Creek Boulevard, Cupertino, California, 95014, and following
6 a speech by former United States of America Secretary of State Colin
7 Powell, Elgrie Hurd III had exercised rights to free speech and
8 peaceable assembly guaranteed to him and protected by the First
9 Amendment to the United States Constitution, and other laws, by
10 voicing his protest to the war in Iraq and various actions of the
11 Bush Administration in relation to the Iraq war.
12
13

14
15 2. While exiting the aforementioned location, and while standing
16 peaceably on a sidewalk/berm/curb on the side of a road and outside
17 the traveled portion of the road, Elgrie Hurd III was illegally and
18 without any legal justification whatsoever searched and seized by
19 Defendant, TOM COUNCIL.
20
21

22 3. Further, as there was no legal justification for the search and/or
23 seizure of ELGRIE HURD III, upon belief, ELGRIE HURD III was profiled
24 and targeted because of his race and/or ancestral or national origin,
25 which is Black/African-American, and/or because of the aforementioned
26 exercise of his right to speak freely and peaceably assemble by
27 Defendant, TOM COUNCIL, who walked past multiple other people who
28

1 were likewise standing peaceably on a sidewalk/berm/curb before
2 seizing Plaintiff.

3
4 4. Defendant, TOM COUNCIL, while standing on the street, reached out
5 and grabbed Elgrie Hurd III, while Elgrie Hurd III, was standing
6 peaceably sidewalk/berm/curb on the side of a road as set forth
7 above, and then did the following to Elgrie Hurd III.
8

9
10 5. Defendant, TOM COUNCIL, seized Elgrie Hurd III.
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12
13 6. Defendant, TOM COUNCIL, searched Elgrie Hurd III.
14

15 7. Defendant, TOM COUNCIL, arrested Elgrie Hurd III.
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17

18 8. Defendant, TOM COUNCIL, subjected Elgrie Hurd III to excessive
19 force during the arrest, search and/or seizure.
20

21 9. The excessive force included, but may not be limited to, the
22 following committed upon Elgrie Hurd III.
23

24
25 10. Defendant, TOM COUNCIL, violently forced Elgrie Hurd III's face
26 and person onto the pavement.
27
28

1 11. Defendant, TOM COUNCIL, used police instrument(s)/club(s) to
2 batter Elgrie Hurd III.

3
4 12. Defendant, TOM COUNCIL, closed handcuffs in a manner that was
5 excessively tight around Elgrie Hurd III's wrists.
6

7
8 13. Defendant, TOM COUNCIL, forced Elgrie Hurd III in a face down
9 position into the rear seat of a Santa Clara County Office of the
10 Sheriff vehicle.
11

12
13 14. The aforementioned acts committed by the Defendant, TOM COUNCIL,
14 were illegal and violated Elgrie Hurd III's civil rights as set forth
15 in this Complaint.
16

17 **JURISDICTION**

18
19 15. This Court has jurisdiction over these 42 U.S.C. § 1983 actions
20 pursuant to 28 U.S.C. § 1331.
21

22 16. Defendant, TOM COUNCIL, was a California citizen at all times
23 relevant to the claims herein.
24

25
26 17. Defendant, TOM COUNCIL, committed the acts and omissions
27 complained of herein in Cupertino, Santa Clara County, State of
28 California.

1
2 18. Defendant, TOM COUNCIL, was, at all times relevant to the claims
3 herein, a California citizen employed as a sheriff authorized and
4 deployed by the Santa Clara County Office of the Sheriff and/or Santa
5 Clara County Sheriff Department to participate in the arrest, search
6 and seizure of Elgrie Hurd III in Cupertino, California, on November
7 11, 2005.
8

9
10 19. Defendant, TOM COUNCIL, is sued only in his individual capacity.
11

12
13 20. Plaintiff, ELGRIE HURD III, was at all times relevant to the
14 claims herein a California citizen who, on November 11, 2005, resided
15 at 226 Greendale Way, Apartment 3, in San Jose, California.
16
17

18 VENUE
19

20 21. Pursuant to 28 U.S.C. § 1391(b), a civil action wherein
21 jurisdiction is not founded solely on diversity of citizenship, may
22 be brought in a judicial district where any defendant resides if all
23 defendants reside in the same state.
24

25
26 22. This action is not founded on diversity of citizenship as all
27 parties hereto are citizens of California.
28

1 23. Defendant, TOM COUNCIL, is and was at all times pertinent hereto
2 a resident of a city within the jurisdiction of the Northern District
3 of California.
4

5
6 24. The acts complained of in this Complaint occurred in Santa Clara
7 County, and, therefore, venue is appropriate in the United States
8 District Court for the Northern District of California, in the San
9 Jose division.
10

11
12 **STATE ACTOR**
13

14 25. Defendant, TOM COUNCIL, acted under color of California state
15 law, at the time of the acts complained of in this Complaint.
16

17 26. Defendant, TOM COUNCIL, deprived Elgie Hurd III of United States
18 Constitutional rights while acting under color of California state
19 law. To wit, he was a Santa Clara County employee, working in the
20 Santa Clara County Office of the Sheriff or the Santa Clara County
21 Sheriff Department acting under State of California law when he
22 participated in the arrest, search and seizure of Elgie Hurd III.
23
24
25

26 **DAMAGES**
27
28

1 27. The Defendant's acts described in this Complaint herein directly
2 and proximately caused Elgrie Hurd III to suffer, including but
3 perhaps not limited to injury and the following damage(s), as set
4 forth below.
5

6
7 28. The Defendant's acts described herein directly and proximately
8 caused Elgrie Hurd III to suffer loss of the pleasures of living
9 (hedonic damages) and loss of time while under arrest and while he
10 suffers the effects of the illegal arrest, search and seizure.
11

12
13 29. The Defendant's acts described herein directly and proximately
14 caused Elgrie Hurd III to suffer physical pain and suffering.
15

16
17 30. The Defendant's acts described herein directly and proximately
18 caused Elgrie Hurd III to suffer emotional distress, mental anguish
19 and psychological injury.
20

21 31. The Defendant's acts described herein directly and proximately
22 caused Elgrie Hurd III to suffer past, present and future impairment
23 of reputation.
24

25
26 32. The Defendant's acts described herein directly and proximately
27 caused Elgrie Hurd III to suffer medical expenses.
28

1 33. The Defendant's acts described herein directly and proximately
2 caused Elgrie Hurd III to suffer attorney fees, both for having to
3 defend potential criminal charges for assault and battery of an
4 officer and false report of a bomb, and as permitted for civil
5 actions
6

7
8 34. The amount of compensatory damages caused by the Defendants to
9 Elgrie Hurd III is in excess of the \$75,000.00 (U.S.) jurisdictional
10 minimum of this Court, exclusive of interest, costs and attorney
11 fees.
12

13
14 35. The Defendant's violations of Elgrie Hurd III's United States
15 constitutional rights were grossly negligent, reckless, malicious and
16 involved an entire want of care. They resulted from conscious
17 indifference to the rights, welfare, and safety of Elgrie Hurd III.
18
19

20 36. Plaintiff seeks an amount of punitive damages to be awarded
21 against the Defendant in whatever amount the jury determines to be
22 appropriate.
23

24
25 37. Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, 42
26 U.S.C. § 1988, and F.R.C.P. 54, Plaintiff seeks reasonable and
27 necessary attorneys' fees incurred in prosecuting its 42 U.S.C. §
28 1983.

COUNT 1

(42 U.S.C § 1983/Unreasonable Search & Seizure/4th Amendment)

38. Plaintiff incorporates and realleges all other paragraphs of this Complaint as if stated verbatim in this Count.

39. The acts and omissions of Defendant, TOM COUNCIL, was committed while purporting or pretending to act in the performance of his official duties on behalf of the aforementioned county.

40. Plaintiff had a right guaranteed by the Fourth (4th) Amendment to the United States Constitution not to be subjected to unreasonable search and/or seizure without probable cause that a crime has been committed by law enforcement officers such as Defendant, TOM COUNCIL.

41. Defendant, TOM COUNCIL, under color of the authority of the State of California and Santa Clara County, intentionally violated Plaintiff's constitutional right guaranteed by the Fourth (4th) Amendment to the United States Constitution to be free from unreasonable search and/or seizure without probable cause that a crime has been committed.

1 42. Defendant, TOM COUNCIL, actively participated in and
2 intentionally unreasonably searched and/or seized Plaintiff without
3 probable cause that a crime had been committed when there was no
4 legal justification for doing so.
5

6
7 43. The reason given by Defendant, TOM COUNCIL, for searching and
8 seizing Plaintiff was as follows in the Office of the Sheriff, Santa
9 Clara County, Incident Report, Case # 05-315-0441C, wherein he wrote:
10 "While working a crowd control detail at DeAnza Junior College, I and
11 several other officers (sic) attempted to remove a group of
12 demonstrators from the roadway. S-Hurd moved to the curb but refused
13 to (sic) orders to exit the roadway. When I attempted to nudge him
14 onto the curb, S-Hurd grabbed my right arm and attempted to pull me
15 with him into the crowd. With the aid of Deputy Thrall #1873, I was
16
17
18 able to pull S-Hurd to the ground and after a struggle was able to
19 handcuff him. S-Hurd was arrested for 243(b) and 148(a)(1) PC and
20 booked into the Main Jail."
21

22 44. Further statement of the reason given by Defendant, TOM COUNCIL,
23 for searching and seizing Plaintiff was as follows in the Office of
24 the Sheriff, Santa Clara County, Narrative, Case # 05-315-0441C,
25 wherein he wrote: "On 11-11-05 while working a a (sic) crowd control
26 detail at DeAnza Junior College I made contact with a group of
27 demonstrators who were standing in the roadway and blocking vehicular
28

1 traffic. I and several officers were ordered to clear the roadway.
2 The demonstrators complied with our orders and moved from the
3 roadway, into a nearby parking lot. They then moved through a
4 parking lot and on to another roadway and proceeded (sic) to obstruct
5 traffic again. We approached (sic) them a second time and ordered
6 them to exit the roadway and move onto the curb. One of the
7 demonstrators, now know (sic) as Elgrie Hurd III moved to the edge of
8 the roadway but refused to step up on the curb. I approached
9 demonstrator Hurd and nudged him with my bokan and at the same time
10 verbally ordered him to get out of the roadway. Hurd grabbed my
11 right arm with his right hand and attempted to pull me out of the
12 roadway with him. I broke free of Hurd's grip and grabbed him by the
13 shirt and was able to pull him away from the crowd..."

14
15
16
17
18 45. The Plaintiff never refused to step onto the curb. That
19 statement by Defendant, TOM COUNCIL, is false. To the contrary,
20 Plaintiff was already on the curb and out of the road way when
21 Defendant seized him.

22
23
24 46. The Plaintiff did not grab Defendant, TOM COUNCIL's, right arm.
25 That statement by Defendant, TOM COUNCIL, is false. To the contrary,
26 Defendant grabbed and pulled Plaintiff's right arm when Plaintiff was
27 already on the curb.
28

1 47. The Plaintiff was never verbally ordered to get out of the
2 roadway. That statement by Defendant, TOM COUNCIL, is false.

3
4 48. Defendant, TOM COUNCIL, through his acts and omissions, played a
5 substantial part in bringing about and actually causing the
6 injury/damages suffered by Plaintiff.
7

8
9 49. The injury and damages of Plaintiff was a reasonably foreseeable
10 consequence of the acts and omissions of Defendant, TOM COUNCIL.
11

12
13 50. The acts and omissions of Defendant, TOM COUNCIL, constituted an
14 unreasonable seizure of Plaintiff.
15

16
17 51. The acts and omissions of Defendant, TOM COUNCIL, constituted an
18 unreasonable search of Plaintiff.
19

20 52. Defendant, TOM COUNCIL, violated the Fourth (4th) Amendment to the
21 United States Constitution as its protection was guaranteed to
22 Plaintiff, because the Defendant conducted an unreasonable search
23 and/or seizure of Plaintiff without probable cause that a crime has
24 been committed.
25

26
27 53. This violation of the Fourth (4th) Amendment to the United States
28 Constitution is actionable pursuant to 42 U.S.C. 1983.

1
2 54. The acts and omissions of Defendant, TOM COUNCIL, were causes-in-
3 fact of damage(s) suffered by Plaintiff as set forth in the Common
4 Allegations and incorporated herein in full.
5

6
7 55. The acts and omissions of Defendant, TOM COUNCIL, proximately
8 caused damage(s) suffered by Plaintiff as set forth in the Common
9 Allegations and incorporated herein in full.
10

11
12 WHEREFORE, Plaintiff, ELGRIE HURD III, requests that this
13 Honorable Court enter judgment against Defendant, TOM COUNCIL, for an
14 amount of money in excess of the jurisdictional minimum (\$75,000.00)
15 that the jury deems the full and fair amount of Plaintiff's
16 compensatory, exemplary and punitive damages, together with interest,
17 costs and attorney fees as permitted by statute and other applicable
18 law.
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20
21

22 COUNT 2

23 (42 U.S.C § 1983/Retaliation for Exercise of Freedom of Expression
24 and Peaceable Assembly/1st Amendment)
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26

27 56. Plaintiff incorporates and realleges all other paragraphs of this
28 Complaint as if stated verbatim in this Count.

1
2 57. Plaintiff's speech and/or expression and/or peaceable assembly as
3 set forth in the Common Allegations was constitutionally protected.
4

5
6 58. Plaintiff's speech and/or expression and/or peaceable assembly as
7 set forth above was a substantial and/or motivating factor in
8 Defendant's decision to seize and/or search Plaintiff.
9

10
11 59. The Defendant's decision to seize and/or search Plaintiff was
12 done as retaliation for Plaintiff's speech and/or expression and/or
13 peaceable assembly as set forth above.
14

15 60. The acts and omissions of Defendant, TOM COUNCIL, were committed
16 while within the limits of his lawful authority, or alternatively,
17 while purporting or pretending to act in the performance of his
18 official duties on behalf of the aforementioned county.
19
20

21 61. Plaintiff had a right guaranteed by the First (1st) Amendment to
22 the United States Constitution not to be subjected to retaliation for
23 the exercise of his right to freedom of speech, expression and/or to
24 peaceably assemble by law enforcement officers such as Defendant, TOM
25 COUNCIL.
26
27
28

62. Defendant, TOM COUNCIL, under color of the authority of the State of California and Santa Clara County, intentionally violated Plaintiff's constitutional right guaranteed by the First (1st) Amendment to the United States Constitution to be free from retaliation for the exercise of his right to freedom of speech, expression and/or to peaceably assemble by law enforcement officers such as Defendant, TOM COUNCIL.

63. Defendant, TOM COUNCIL, actively participated in and intentionally retaliated against Plaintiff for the exercise of his right to freedom of speech, expression and/or to peaceably assemble when there was no legal justification for doing so, as set forth in the Common Allegations.

64. Defendant, TOM COUNCIL, through his acts and omissions, played a substantial part in bringing about and actually causing the injury/damages suffered by Plaintiff.

65. The injury and damages of Plaintiff was a reasonably foreseeable consequence of the acts and omissions of Defendant, TOM COUNCIL.

66. The acts and omissions of Defendant, TOM COUNCIL, constituted a retaliation for the Plaintiff's exercise of his right to freedom of speech, expression and/or to peaceably assemble.

1
2 67. Defendant, TOM COUNCIL, violated the First (1st) Amendment to the
3 United States Constitution as its protection was guaranteed to
4 Plaintiff, because the Defendant seized and/or searched Plaintiff as
5 retaliation for the Plaintiff's exercise of his right to freedom of
6 speech, expression and/or to peaceably assemble.
7

8
9 68. This violation of the First (1st) Amendment to the United States
10 Constitution is actionable pursuant to 42 U.S.C. 1983.
11
12

13 69. The acts and omissions of Defendant, TOM COUNCIL, were causes-in-
14 fact of damage(s) suffered by Plaintiff as set forth in the Common
15 Allegations and incorporated herein in full.
16
17

18 70. The acts and omissions of Defendant, TOM COUNCIL, proximately
19 caused damage(s) suffered by Plaintiff as set forth in the Common
20 Allegations and incorporated herein in full.
21
22

23 WHEREFORE, Plaintiff, ELGRIE HURD III, requests that this
24 Honorable Court enter judgment against Defendant, TOM COUNCIL, for an
25 amount of money in excess of the jurisdictional minimum (\$75,000.00)
26 that the jury deems the full and fair amount of Plaintiff's
27 compensatory, exemplary and punitive damages, together with interest,
28

1 costs and attorney fees as permitted by statute and other applicable
2 law.

3
4
5 COUNT 3

6 (42 U.S.C § 1983/Equal Protection Claim/14th Amendment)
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8
9 71. Plaintiff incorporates and realleges all other paragraphs of this
10 Complaint as if stated verbatim in this Count.
11

12
13 72. Plaintiff was entitled to equal protection of the law under the
14 Fourteenth (14th) Amendment to the United States Constitution.
15

16
17 73. Defendant, TOM COUNCIL, used selective enforcement of the law
18 and/or conducted a racially-motivated arrest of Plaintiff.
19

20 74. Individuals who were similarly situated to Plaintiff were not
21 stopped, searched, seized or arrested by Defendant, TOM COUNCIL, and
22 this demonstrates the requisite discriminatory effect and purpose of
23 Defendant.
24

25
26 75. The Defendant's decision to stop, seize and/or search Plaintiff
27 was done as a result of Plaintiff's race (black) and ethnicity
28 (African-American) as set forth above.

1
2 76. The acts and omissions of Defendant, TOM COUNCIL, were committed
3 while purporting or pretending to act in the performance of his
4 official duties on behalf of the aforementioned county.
5

6
7 77. Plaintiff had a right guaranteed by the Fourteenth (14th)
8 Amendment to the United States Constitution not to be subjected to
9 unequal protection of the law by law enforcement officers such as
10 Defendant, TOM COUNCIL.
11

12
13 78. Defendant, TOM COUNCIL, under color of the authority of the State
14 of California and Santa Clara County, intentionally violated
15 Plaintiff's constitutional right guaranteed by the Fourteenth (14th)
16 Amendment to the United States Constitution to receive equal
17 protection of the law by law enforcement officers such as Defendant,
18 TOM COUNCIL.
19

20
21 79. Defendant, TOM COUNCIL, actively participated in and
22 intentionally stopped, searched and seized Plaintiff as a result of
23 his race and ethnicity when there was no legal justification for
24 doing so, as set forth in the Common Allegations.
25
26
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1 80. Defendant, TOM COUNCIL, through his acts and omissions, played a
2 substantial part in bringing about and actually causing the
3 injury/damages suffered by Plaintiff.
4

5
6 81. The injury and damages of Plaintiff was a reasonably foreseeable
7 consequence of the acts and omissions of Defendant, TOM COUNCIL.
8

9 82. Defendant, TOM COUNCIL, violated the Fourteenth (14th) Amendment
10 to the United States Constitution as its protection was guaranteed to
11 Plaintiff, because the Defendant used selective enforcement of the
12 law and/or conducted a racially-motivated arrest of Plaintiff.
13

14
15 83. This violation of the Fourteenth (14th) Amendment to the United
16 States Constitution is actionable pursuant to 42 U.S.C. 1983.
17

18
19 84. The acts and omissions of Defendant, TOM COUNCIL, were causes-in-
20 fact of damage(s) suffered by Plaintiff as set forth in the Common
21 Allegations and incorporated herein in full.
22

23
24 85. The acts and omissions of Defendant, TOM COUNCIL, proximately
25 caused damage(s) suffered by Plaintiff as set forth in the Common
26 Allegations and incorporated herein in full.
27
28

1 WHEREFORE, Plaintiff, ELGRIE HURD III, requests that this
2 Honorable Court enter judgment against Defendant, TOM COUNCIL, for an
3 amount of money in excess of the jurisdictional minimum (\$75,000.00)
4 that the jury deems the full and fair amount of Plaintiff's
5 compensatory, exemplary and punitive damages, together with interest,
6 costs and attorney fees as permitted by statute and other applicable
7 law.
8

9
10 **PRAYER FOR RELIEF**
11

12 As set forth in this Complaint, and for the reasons set forth
13 therein, Plaintiff seeks the following relief:
14

15
16 a) Compensatory damages in an amount in excess of the
17 jurisdictional minimum of this Court, as set forth in the
18 common allegations, to be determined by the jury;
19

20
21 b) Exemplary damages in an amount to be determined by the
22 jury;
23


24 c) Punitive damages in an amount to be determined by the jury;
25

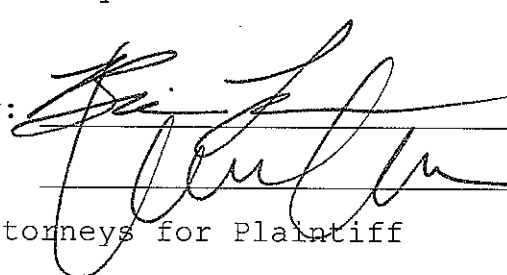
26 d) Reasonable and necessary attorneys' fees as alleged herein;
27
28

1 e) Interest on all damages as allowed under federal law;

2
3 f) Court costs and costs permitted by statute;

4
5
6 **PLAINTIFF HEREBY MAKES A DEMAND FOR JURY TRIAL.**

7
8
9 By: 
10 Attorney for Plaintiff

11
12 By: 
13
14 Attorneys for Plaintiff

15 Dated: 5/30/07
16
17